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Report of the Judicial Council on Expediting the Work of the Supreme Court

Alfred J. Schweppe

a year more than judges who have served for twenty years. Why should those things continue?

The provision, of course, is in the constitution by reason of an old-fashioned idea that it was necessary in order to keep the judiciary independent from the legislature so that it would be impossible for the legislature to reward or punish the judges. This is a possible basis for argument in the case of a single state officer such as a governor or an attorney general or auditor or someone of that sort. There, conceivably, a legislature could reward or punish that officer by a salary increase or decrease, but when you are speaking of the judiciary, you are speaking of all the judges of the state, and when the legislature grants a general salary increase, why should it not become effective immediately? Why should not these inconsistencies between salaries be avoided? These inconsistencies have been avoided in Colorado; and in Iowa; in the last two years, and in about twelve other states. This is another matter which this state can be working on.

Well, I am just pointing out that there are a few things that need to be attended to and cared for. I am sure that this State Bar Association and the Judicial Council are aware of them and are working on them. But considering the really important things, I say, and I am very proud to say it, that I regard the judiciary of the State of Washington as standing very high in our country, and I consider it a great honor and a privilege to have had the opportunity of serving on the Supreme Court in the State of Washington.

Report of the Judicial Council on Expediting the Work of the Supreme Court

By Alfred J. Schweppe of Seattle

Mr. President, members of the Washington State Bar Association and friends.

Former Chief Justice Hamley, now Circuit Judge of the Ninth Circuit, has broken down into the substantial component parts, the subject on which I will comment briefly this afternoon.

I am appearing here as executive secretary to the Judicial Council, a position which I have held since those remote days of 1929 when, as those who are old enough may remember, I was momentarily dean of the University of Washington Law School. I have always been interested in the improvement in the administration of justice. I have, I think

probably through inertia of the members of the council, retained the position of executive secretary ever since.

I am presenting this report on behalf of the Judicial Council with respect to the supreme court work load emergency. The council is a body of nine members, constituted, according to the statute, of two supreme court judges, two superior court judges and five lawyers, nine having a vote, but I, as executive secretary, having none. I am merely appearing here in my secretarial capacity to bring this problem before you as it was presented to the Judicial Council and crystalized in a resolution, copies of which have been available since this morning at the door, and which most of you have probably had the opportunity to read.

The problem is the work load of the supreme court. According to the two most recent chief justices, Judge Hamley who has just left the rostrum, and Judge Donworth, who is here in the audience, the Supreme Court of the State of Washington is falling rather rapidly behind. In the May term of this year it was impossible for the court to set all of the cases that were ready for assignment. In the September term many cases now ready for assignment will go unset and cannot be set until the January term and the backlog of cases is increasing. Chief Justice Donworth tells me that the court is now more than half a term behind in the backlog of cases. In other words, speaking as of now, probably at the beginning of August, 1956, there are a great many cases now ready for argument which cannot be heard until the January term in court and will not be disposed of, probably, until several months afterward.

The court consists of nine judges, and the problem that presents itself in this emergency situation is one that has been under consideration by the Judicial Council off and on for a great many years.

Back in 1929 when the supreme court was under a very heavy work load, studies were made of methods of expediting the work of the supreme court—in relieving the congestion—and a number of alternatives were presented at that time in the 1929 Report of the Judicial Council.

We went into a very severe depression, however, and the work load and the number of cases that went to supreme court fell off rapidly, so that the emergency has not again presented itself until beginning about two years ago. The number of cases that the court is behind is now increasing rather rapidly.

Various methods have been under consideration by the council for

a good many years of relieving the work load of the supreme court. Under the present constitution there is no limit on the number of judges. The legislature of 1909 provided for a court of nine judges sitting in two departments, with a full court sitting en banc.

There is nothing to prevent the legislature under the present constitution from adding another department to the supreme court if it so chooses. That's one method that is available.

Another method that has been considered by the council over the years, is limiting the jurisdiction of the supreme court by a certiorari method; that is, taking certain classes of cases and letting the judgment of the trial court be final unless good cause can be shown why that case should be heard on appeal.

A third method that has been considered is increasing the jurisdictional amount necessary to qualify the case for the jurisdiction of the supreme court. As you know, at the present time we still have the 1889 provision of a limit of $200 to qualify a case for such jurisdiction.

A fourth method that has been considered as appropriate because used in a good many jurisdictions is an intermediate appellate court. There are now, I think, thirteen states that have an intermediate appellate court with three judges in each department, who hear either all of the cases in the first instance, or most of the cases on appeal of the first instance, with further review usually discretionary in the highest tribunal in the state.

A fifth method is also in use for enabling a court to handle its work load, and that is what has often been called by scholars the "unitary court system," under which the whole court system is viewed as a unit, superior courts and the supreme court. Under this system, whenever the supreme court needs help, it can call in superior judges who will sit *pro tempore* as supreme court judges to help out that court and to reduce the work load that may present itself as of some particular moment. That system is in use in England. In other jurisdictions the trial judges and the appellate judges rotate. Trial judges can be called up to sit on the court of appeal; appellate judges can come down and try cases.

The principal example we have in this country of the unitary court system is the federal courts of appeal. The federal courts of appeal have the right to call on district judges to relieve the work load, and I may say the Court of Appeal for the Ninth Circuit has been using that method on a rather wholesale scale for the past two years because the

court found itself about eighteen months behind two years ago. The court has now brought its work load, by use of these federal district judges, down to within four months.

A sixth method is the statutory creation of supreme court commissioners, who can sit and write opinions, which must be approved by the court itself.

Those several methods have generally been considered by the Judicial Council in reviewing what should be done to keep the Supreme Court of the State of Washington up to date. When this problem began to appear in an acute stage about two years ago, the court itself went to work on the problem. A committee headed by Judge Matt Hill, who is not here and who otherwise would have undoubtedly presented this report on behalf of the council, arrived at the conclusion that from the court's standpoint two things ought to happen.

First, immediate relief was necessary to take care of the work load.

Second, some permanent plan should be settled on which would constitutionally take care of the work load over the long range future. The committee of the council, headed by Judge Hill, arrived at the conclusion that from the court's standpoint the most useful and most immediately helpful method of relieving the court from its present condition would be for the legislature to create two additional supreme court judgeships temporarily until a permanent constitutional plan was set up for taking care of supreme court congestion on a long range basis. The idea is that the legislature would create two additional judgeships, but the court would remain a court with two departments of five each with an en banc court of nine, with each of these two temporary judges rotating within a department. In other words, there would always be five judges but there would be an extra judge who would rotate from time to time and take care of his share of the work load in each department.

Looking at it mathematically, the picture is about this: we presently have nine supreme court judges headed by the chief justice. The chief justice is the administrative officer of the court, and has a great many administrative details to take care of. The Chief Justice tells me that in addition to the backlog of cases, which are ready for assignment and could not be set, he had on his desk as of yesterday, ninety-two applications for habeas corpus from the penitentiary and the reformatory, all brought about by the two most recent jail delivery decisions of the Supreme Court of the United States.

That Court over a period of about five years has rendered a number of decisions which have made every person who is in a penitentiary restless lest he was denied due process of law somewhere in the course of the trial court proceedings, with the result that there is now a vast avalanche of petitions for habeas corpus which, under our judicial system of course, all have to be carefully examined and treated and dealt with judicially, even though, I am informed, many of them are quite illiterate and very difficult for the court to fathom and understand.

We have, as I say, the eight judges who work full time. The chief justice is the administrative officer, and he writes some decisions but far fewer than the other eight judges. If two judges are added to the court, according to the report that the subcommittee turned into the Judicial Council, it would increase the working capacity of the court very close to twenty per cent. It is contemplated in the council report and in the council resolution, of which you have a copy, that these two judges would be appointed but would hold those positions only temporarily until some permanent method of relief is settled on.

The council, as presently constituted, has arrived at the conclusion that the permanent solution of the supreme court work load should be, if possible, an intermediate appellate court system, and failing to obtain that on account of monetary or other reasons, a constitutional amendment that would set up a unitary court system whereby the supreme court can from time to time call in superior court judges to assist in the work load, who, while on that assignment, will be *pro tempore* judges of the supreme court.

The latter method has been proposed to the legislature by the Judicial Council on three or four previous occasions. It has almost passed on several occasions, but for the lack of particular momentum it has never passed both houses.

The council, as presently constituted, believes that an intermediate appellate court system is the most desirable. It has the precedent behind it of being in existence in some thirteen states. It is in existence in the federal system. It would, however, contitute a very considerable increase in the judicial structure of the state. If we adopted, for example, the New Jersey Plan of an intermediate appellate court system, all superior court cases would go in the first instance to an intermediate appellate court with, I think, only two exceptions. Cases involving constitutional questions would go directly to the supreme

court, and capital death penalty cases would also go directly to avoid delay.

We would need an intermediate appellate court system of probably twelve to fifteen judges sitting in departments of three. When you have in mind that the present supreme court cannot take care of the full work load now with nine judges, it is obvious that it is going to take an intermediate appellate court system somewhat larger than that to handle in the first instance all of the appeals coming up from the superior court. There probably would be an intermediate court in Seattle, one in Spokane, perhaps one in Wenatchee, one in Yakima or Walla Walla. Above that level, the Supreme Court of the State, while handling a limited number of direct appeals from the superior courts, would exercise discretionary review in those instances where it was believed that the intermediate appellate court had committed error.

California has an intermediate appellate court system. I think California has at the present time several dozen intermediate court of appeal judges sitting in departments of three, and about fifty more in the appellate departments of the superior court. The intermediate courts do not, under the California system, get all of the cases in the first instance. The number of cases that go directly to the Supreme Court of California are rising in number, and from a jurisdictional standpoint are broader in scope than in New Jersey where virtually every case goes in the first instance to the intermediate appellate court.

The reason I have amplified that statement to such an extent is that, of course, an intermediate appellate court system, if instituted at the appropriate time, will entail some increase in expense to the people of the State of Washington in maintaining the judicial system. We would need additional court room facilities; we would have twelve to fifteen intermediate appellate court judges and the clerks and the necessary staff to staff such courts. Whether or not the legislature will look favorably upon such a plan that might entail the expense of half a million or three quarters of a million dollars a year more, I don't know.

Actually there is no reason in the world why the legislature should have to hesitate long from the expense standpoint. A study made by the Judicial Council four years ago shows that the total cost of the third department of the government, namely the judicial department, which from the standpoint of individual right is one of the most important of three departments of government, costs only a fraction of one per cent of the total state budget. For example, the state's general budget for the biennium March 31, 1951 to March 31, 1953, amounted

to $425,000,000. The total cost to the state and counties of the supreme and superior courts aggregated less than $3,000,000.

In the federal system it is even more ridiculous than that. The cost of the whole federal judicial system, I think, when the last study was made four years ago, was one-fourteenth of one per cent of the total federal budget. Looking at it theoretically, the expense of an intermediate appellate court system would not be great. On the other hand, the amount is somewhere between half a million and three-quarters of a million dollars annually, and the legislature might hesitate to incure that expense.

It was for that reason that the council recommended consideration of a second method which is also referred to in this resolution. If the legislature does not want to set up an intermediate appellate court system, it would have available the unitary court plan under which superior court judges can be called in from time to time to help take care of the work load. That would have several advantages. We would retain our present simple court structure of but one appeal, and that would be final. In all states that have intermediate appellate courts, of course, you have the first appeal to the intermediate appellate court and then some method whereby you can seek review in the supreme court, which does entail further substantial delay.

Implementing what Judge Hamley said awhile ago about the court system in the State of Washington, I came here from the Middle West and was familiar with court structure there and in the East by reason of the cases we studied in law school. I have always greatly admired the judicial system of the State of Washington, which I think is one of the best. We have but one court of general jurisdiction, the superior court, into which all business goes, instead of having what they have in some of the eastern states: probate courts, circuit courts, and district courts, each with separate jurisdiction.

We have also had, up to the present time, but one appeal, which is marvelous: one trial court of general jurisdiction, and one appeal, except in cases involving federal questions. It's a wonderful system from the standpoint of the litigant.

We are now faced, however, with this congestion problem, and the question now is which way shall we go. The court itself feels and has persuaded the council unanimously that we should cause the legislature to look favorably upon one of the long term solutions, either the intermediate appellate court system or a constitutional amendment authorizing the supreme court to call in superior court judges; and that

pending the permanent constitutional solution, the legislature should be asked immediately to provide two additional supreme court judges who will rotate within the department of five in order to increase the work load capacity of the court about twenty per cent, on the understanding that those two additional positions would cease whenever the permanent method of relief is constitutionally provided.

That is the report, members of the bar, and Mr. President, that I have been asked by the Judicial Council to bring before this body. To bring the matter to a head because the Judicial Council desires, if possible, that this association approve the recommendation made in this resolution, Mr. President, I should like to make a motion, if I may.

PRESIDENT HAROLD W. COFFIN: You may.

ALFRED J. SCHWEPPE: Mr. President, I move that the Washington State Bar Association assembled in its 1956 annual convention at Tacoma, Washington, endorse the resolution of the State's Judicial Council dated August 1st, 1956, advocating immediate addition of two temporary judgeships of the State Supreme Court in order to expedite the work of that court until permanent assistance is constitutionally provided, and that the Association recommend to the 1957 legislature immediate legislation appropriate to accomplish said purpose in the public interest lest delay in supreme court decisions become intolerable.

I make that motion on behalf of the Judicial Council, Mr. Chairman.

PRESIDENT HAROLD W. COFFIN: Is there a second to the motion?

FRANK E. HOLMAN: I second the motion.

PRESIDENT HAROLD W. COFFIN: The motion has been moved and seconded. Any discussion?

GORDON MIFFLIN: May I ask Mr. Schweppe a question?

PRESIDENT HAROLD W. COFFIN: Yes.

GORDON MIFFLIN: Mr. Schweppe, I wonder whether or not the suggestion has been considered of dividing the Supreme Court into three departments of three each, and then, of course, in certain cases where that wouldn't be adequate, the device of calling others in. I would like to know what your views are on that.

ALFRED J. SCHWEPPE: Well, yes, that plan has been under consideration. It has received no substantial support. It has received very little support for the reason that it is believed that the bar, generally, and the people would prefer at the top level an appellate court which consists of a department of five judges—consists of a

majority of the court as now constituted under current legislation rather than to have the case heard and decided in the first instance by a minority of three judges in a court of nine. Your suggestion has received consideration.

PRESIDENT HAROLD W. COFFIN: Any further discussion?

TRACY E. GRIFFIN: Mr. President, may I ask a question?

PRESIDENT HAROLD W. COFFIN: Yes.

TRACY E. GRIFFIN: I would like to ask what the work load in written opinions was in the days of Judge Steinert. How many opinions did those judges write per annum in comparison to the number of opinions being written by the judges today?

ALFRED J. SCHWEPPE. I don't have it precisely at my fingertips but I have it approximately, as you can verify to your own satisfaction.

The Judicial Council for as many as twenty-five years has published in each biennial report a survey of supreme court opinions. In the Judicial Council reports you will find, usually on the last page, a statistical survey prepared by the clerk of the supreme court showing the number of cases filed, the number of cases decided, the number of opinions written, the number of cases reversed, the number of cases affirmed, the number of criminal cases, the number of civil cases, the number of cases in which reviews are taken to the Supreme Court of the United States, and so on.

If you will study those Judicial Council reports which contain the official survey prepared by the clerk of the supreme court, himself, you will find that in the late '20's and early '30's the work load was considerably higher in terms of number of cases than it is now. The number of cases in which opinions are actually written today—the 1955 report of the Judicial Council is the last one that is available— has actually dropped considerably in the last twenty-five years. I can't tell you precisely, but it can be verified by any lawyer interested in the course of a few minutes by examining the last five or ten Judicial Council reports. The council has been told by the court, and this has been considered at length, that while there has been a decrease in the number of opinions actually written by the court, still with a vast increase in legislation and with considerable increase in the complexity of the business structure of the State, the cases, while not so many in number, have in general, become materially more complex, as a rule, than they have been in the past. True, there is the usual list of automobile cases and usual list of other personal injury cases. On the other hand, the court is presented annually, particularly after every legis-

lative session, with many extremely knotty problems which require lengthy consideration—a good deal more consideration, over all, than was necessary in earlier days.

In other words, while numerically the work load has dropped in terms of numbers of cases, the number of different cases has vastly increased. I think that is the interpretation that the court puts on its present work load, namely, that the work load while slower in number of cases, is in terms of inherent difficulty much tougher than the court has faced at any time in its history.

Mr. Chief Justice Donworth, is that a fair statement?

CHIEF JUSTICE DONWORTH: That's right.

PRESIDENT HAROLD W. COFFIN: Any further discussion?

HARNER GARVER: Harner Garver from Camas.

PRESIDENT HAROLD W. COFFIN: All right, Mr. Garver from Camas.

HARNER GARVER: May I ask this question: Why is it that the Judicial Council feels that the solution of adding two more associate judges of the supreme court will not answer the question—will not solve the problem?

ALFRED J. SCHWEPPE: It is thought that this is just a temporary solution that will work for a period of time until some more permanent plan is worked out. The point to be borne in mind of it is this: no appellate court of final jurisdiction in the United States currently has more than nine judges, and there are some opinions in that respect that a court with more than nine judges is a little bit unwieldly, although that may be merely a matter of degree. The court believes that the addition of two judges—in other words, an increase of approximately twenty per cent in the capacity of the court to hear cases and write decisions—will take care of the situation for a period of time. Within the course of a few years we would again face the same problem. Then we could add two more judges and an additional department to the supreme court, or we could add an intermediate appellate court, or call in superior court judges. I think, to answer you categorically, for the time being two additional judges would take care of the problem, but only for a relatively few years. That's why the committee, with the full Judicial Council's approval, recommended seeking now a constitutional amendment which would put some permanent solution on the books, recognizing that it takes at least two years to get an amendment to the constitution. First, it takes favorable legislative action at some legislative session, and then the constitutional

amendment can only go on the ballot two years beyond that in order to become legally effective.

PRESIDENT HAROLD W. COFFIN: The chair recognizes Wilbur Zundel.

WILBUR ZUNDEL: Will there be eleven judges on the bench then, or nine?

ALFRED J. SCHWEPPE: The present court structure would not change at all. There would still be two departments of five judges, and the court would sit en banc as a court of nine judges. It would be a full court, not of eleven judges, but of nine judges to hear the en banc cases.

The nine judges might not necessarily be the same each day. They would rotate. And in the departments, which currently have five judges, there would be rotation; but it is not contemplated that the departments would sit with six judges. Each department would still have five judges, with one judge rotating in each department, to give additional manpower to hear cases.

PRESIDENT HAROLD W. COFFIN: The chair recognizes Elias Wright.

ELIAS A. WRIGHT: Since I came to this meeting, you tell me that the court is behind in its work?

ALFRED J. SCHWEPPE: Yes.

ELIAS A. WRIGHT: All right. Then you explain to me why since I came here one judge said that his opinions are all written and he is waiting for more work—one of the supreme court judges.

ALFRED J. SCHWEPPE: I can only answer for what the court has presented as a report through the Judicial Council.

ELIAS A. WRIGHT: Well, that's what he said and he said his cases—his opinions—were all written and all up to date and he had no more to write. Now, there's something wrong somewhere.

ALFRED J. SCHWEPPE: Well, I dare say, Mr. Wright, it could occur that all of the cases that have been assigned to him in this term have been written. Nevertheless, all of the cases that were ready for assignment weren't assigned in the May term, nor will all the cases that are ready for assignment be assigned in the September term; they will have to go over to January.

ELIAS A. WRIGHT: Why doesn't the Chief Justice take a case away from an overworked judge and put this chap to work? There are too many coffee hours around this nation of ours, now. That's what is the trouble with it.

And now Judge Hamley—I thought he came here to pass his compliments. He came here to advertise for this resolution. That's what he came for. Somebody must have brought him for that. He says that there are so many more superior court judges now that there ought to be more supreme court judges. Well, when the superior court judges decide to work forty hours a week, we won't have too many superior court judges. The superior court judges now open at 10 o'clock and close at 4, and the courthouse is dark almost all day of Friday and all day Saturday. Why, you could add twenty more superior court judges in King County and then cut down to opening at 11 and closing at 2.

Now, I can't make a living on those hours and do it honestly. And I don't do it. When I came to Seattle, the court opened at 8 o'clock on the old hill and closed at 6. We got some work done. Now, I drag in at 10 o'clock and there'll be some newspaper man wants to take a picture and so the jury waits and the witnesses all wait and we start in about a quarter after ten.

When I was a boy it was the pride of a bricklayer to lay 1,000 bricks a day. Now, the labor unions say, "Mr. Bricklayer, you cannot lay more than 400 bricks." That's a day's work. He lays 400 bricks in about three hours and he goes home, gets his automobile and gets in the toils of the law, gets arrested for drinking. The State sells him the liquor and then arrests him for drinking it! Then the police get half of the traffic fine for their kitty.

There is an old adage: "Beware of the dangers of leisure." There are too many people who think more of the frivolities of the hour than they do of the blessings of eternity, gentlemen. There are more 7-up signs now than there are church steeples, sir. When people cease to work, a nation goes into degradation. That's the trouble. I can't make a living that way and do it honestly, and I say to you if people work there won't be so much iniquity and there won't be so much leisure around here. Now, I know that in the late '20's the supreme court decided almost twice as many cases as they are doing today. That's the record, and this was a pertinent question that was asked you, and you answered it partially but you didn't entirely.

It may be that temporarily in our practice of law, once in awhile we get a heavy work load, and we have to work Saturdays and Sundays in order to catch up that work load, but that doesn't mean that we should hire four or five more lawyers and stenographers and increase our over-

head because there is an old adage: "It's dark today but there will be sunshine tomorrow."

Mr. President, I am bitterly opposed to this resolution. I think it's wrong, and I don't agree with it at all. It may be that the judges on the supreme court feel that they are overworked, but I'll tell you another story and I can prove this, too. One of the clerks of one of the supreme court judges said the other day, "This is the easiest job I ever had. Every so often the judge says at noon, 'Well, we won't work this afternoon. We'll play golf.' "

There was a time when Greece was the leading nation of the world. When idleness overcame that country, it lost and it disappeared, and was followed by Rome in the height of its power when people worked. By and by leisure became the hour of the day, and Rome disappeared from the face of the earth as a power. Then came France. After the First World War the French thought they could live without working and live on the tribute of the Germans, and when the Second World War came they didn't have any soldiers who would fight.

"Beware of the dangers of leisure," gentlemen. I am not in favor of this resolution.

PRESIDENT HAROLD W. COFFIN: The chair recognizes Paul R. Cressman, of Seattle.

PAUL R. CRESSMAN: I was following Mr. Schweppe's resolution and also following the sheet that I picked up at the door. I did not find that the resolution as he read it was the same as on this sheet. I would like to be corrected if I am wrong. As I understood Mr. Schweppe's reading it did not go as far as the proposed alternatives that are on this sheet. Am I in error?

ALFRED J. SCHWEPPE: Sir, you have before you both a resolution and a motion. You have a mimeographed sheet which you got at the door the resolution adopted by the Judicial Council on August 1st, 1956. The motion which I made a few moments ago was a motion asking this association to endorse this Judicial Council resolution.

ELIAS A. WRIGHT: Mr. President, I move that the motion be laid on the table.

PAUL R. CRESSMAN: I second the motion.

A VOICE: Question.

PRESIDENT HAROLD W. COFFIN: Just a moment until he reads the motion again. Then it will come up for a vote.

ALFRED J. SCHWEPPE: You have before you a mimeographed

resolution adopted by the Judicial Council. After the statement which I have made explaining the background of the council resolution, I made a motion that we endorse it. This motion was seconded.

Mr. President, (reading) I move that the Washington State Bar Association, assembled in its 1956 annual convention at Tacoma, Washington, endorse the resolution of the State Judicial Council dated August 1st, 1956, advocating immediate addition of two temporary judgeships of the State Supreme Court in order to expedite the work of that court until permanent assistance is constitutionally provided, and that the association recommend to the 1957 legislature immediate legislation appropriate to accomplish said purpose in the public interest lest delay in supreme court decisions become intolerable.

What I have just read to you now is a motion asking this association to endorse the Judicial Council's resolution.

PRESIDENT HAROLD W. COFFIN: It has been moved and seconded that this matter be laid on the table. All in favor signify by saying "aye".

MEMBERS: "AYE".

PRESIDENT HAROLD W. COFFIN: Contrary?

MEMBERS: "NO".

PRESIDENT HAROLD W. COFFIN: The chair is in doubt. Will those in favor of laying the matter on the table please rise?

Twenty-four.

Those opposed please rise.

Twenty-seven.

The motion to lay the matter on the table lost by a vote of twenty-four to twenty-seven.

Any further discussion?

PRESIDENT HAROLD W. COFFIN: The chair recognizes Bill Gafferty from Moses Lake.

BILL GAFFERTY: One of the lawyers asked about a third department as a permanent thing in the supreme court, and I understood Mr. Schweppe to say that the first objection to that was that a small minority of the court would be deciding these cases or something like that. Well, assuming for the sake of discussion that we had three four-man departments and one chief justice or something like that, it looks to me as though that would approximately increase by fifty per cent the potential output of the supreme court. I know that I, as a lawyer, would be about as well satisfied to have a majority of one of those three departments trying my cases as have a majority of one of the two

departments we now have deciding them, and I assume most of my clients would go along with that. My clients would be bothering me a little bit more if I had to tell them, "Now, look, if we get through the superior court here we will probably have to go through one appellate court and if we get through that we'll probably have to go through the state supreme court." They'd get a little more impatient if I happen to have a good plaintiff's case and the client can't pay the doctor bills and so on. The client will be more apt to settle cheaply, and I feel as a lawyer I would be handicapped. I'd a whole lot rather have three departments in a State Supreme Court, and try to get these judges to grapple along with it as well as they could. I feel that with the intermediate court we'd have a lot more judges, a lot more expense and a lot more delay.

PRESIDENT HAROLD W. COFFIN: The chair recognizes Mr. Paul R. Cressman, of Seattle.

PAUL R. CRESSMAN: I should like to move to amend Mr. Schweppe's motion to eliminate from the resolution any reference that this association is in favor of an intermediate appellate court system, so that, in effect, all that the resolution would mean is that this organization is in favor of some relief, but definitely not in favor of an intermediate appellate court system as relief. In other words, the motion would be to eliminate all reference to an intermediate appellate court system.

PRESIDENT HAROLD W. COFFIN: You've heard the motion to amend. Is there a second to the motion?

A. C. GRADY: I'll second it.

PRESIDENT HAROLD W. COFFIN: What is your name, sir?

A. C. GRADY: Grady from Port Townsend. A. C. Grady.

PRESIDENT HAROLD W. COFFIN: Grady from Port Townsend. Any discussion on the motion to amend?

A VOICE: Question.

PRESIDENT HAROLD W. COFFIN: All in favor of the motion to amend by deleting any reference to an intermediate appellate court system in the resolution of the Judicial Council signify by saying "aye".

MEMBERS: "AYE".

PRESIDENT HAROLD W. COFFIN: Contrary?

MEMBERS: "NO".

PRESIDENT HAROLD W. COFFIN: The motion to amend is carried—deleting all reference to an intermediate appellate court system. Are now ready for the question on the main motion?

VOICES: Question.

PRESIDENT HAROLD W. COFFIN: Mr. Schweppe, you will have an opportunity to answer for five minutes if you wish.

ALFRED J. SCHWEPPE: I assure you, ladies and gentlemen, I will not use the five minutes.

I have personally followed this problem of relieving the supreme court and expediting the disposition of its business for quite a number of years. As I said a moment ago, we've been fortunate in this state up to date in having but one appeal, from one court of general jurisdiction to one court of last resort.

I personally have a completely open mind as to whether or not the addition to a third department to the supreme court, retaining our excellent policy of only one appeal, might not be preferable to an intermediate appellate court system. I have long favored a constitutional amendment authorizing the majority of the supreme court to call in superior court judges for assistance, as recommended several times by the Judicial Council. This is an inexpensive but very effective plan in any work load emergency, either as an independent plan, or as an addendum to any other plan.

The motion to amend the resolution that has just been passed would still put this association on record as endorsing the creation by the legislature immediately of two temporary supreme court judgeships, but would not commit the association to a permanent form of relief by way of setting up an intermediate appellate court system.

I may say that the personnel of the council whose debate I listened to with great interest, and for whom I am merely making a report, was rather of the view that it would be easier to convince the legislature to set up two additional supreme court judges to give temporary relief if it were tied to some permanent form of relief. Then the legislature would see that whenever some permanent form of relief comes along, the two additional positions on the supreme court would be terminated at the end of those respective terms. The way this resolution is now modified it will still commit the association to two temporary additional judgeships without, however, tying the association in any manner to a recommendation to the legislature of an intermediate appellate court system. It will leave it open to the legislature to grant an additional form of relief by proposing to the people the constitutional amendment calling in superior court judges in an emergency, or by proposing some other form of permanent relief.

PRESIDENT HAROLD W. COFFIN: I will now call the question. All in favor of the motion as amended signify by saying "aye".

MEMBERS: "AYE".

PRESIDENT HAROLD W. COFFIN: Contrary?

MEMBERS: "NO".

PRESIDENT HAROLD W. COFFIN: The motion is carried. Thank you very much, Mr. Schweppe, for your report.

The report of the Committee on Communist Activities has been published in the *Washington State Bar News,* Vol. X, p. 11. Mr. Kenneth P. Short, Chairman of the committee, amplified the report with informal remarks. Mr. Ralph Rogers of Tacoma pointed out that the resolution of 1954, providing that the claiming of the fifth amendment before a court or properly constituted congressional or legislative committee as to possible communist affiliation or other subversive activities should be an automatic ground for discipline or disbarment, was the action not of the Board of Governors, as stated in the report of the committee, but rather the action of the association in convention assembled. Mr. Short agreed that Mr. Rogers' recollection was correct.

The report of the Committee on Juvenile Problems has been published in the *Washington State Bar News,* Vol. X, at p. 12.

Report of Committee on Resolutions

By L. L. Thompson of Tacoma

Mr. L. L. Thompson, Chairman of the Committee on Resolutions, reported the following resolution, with the recommendation that it do pass:

WHEREAS Rule 5 of the Rules for Admission to practice as amended December 2, 1955 requires as a condition to admission to practice that the applicant take an oath which includes the following language:

"I will support the Constitution of the United States, the Constitution of the State of Washington; I am not now and never have been a member of any organization or party having for its purpose and objective the overthrow of the United States government by force or violence."

and

WHEREAS the foregoing oath is applicable to candidates for per-